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July 19, 2006

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: December 22, 2005

Case Number: TSO-0339

This Decision concerns the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual was granted a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on November 8, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l). More specifically, the Notification Letter alleges that the individual has: 1) “an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]”; 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse,” and 3) “engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security.” 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria H and J, the Notification Letter states on July 11, 2005, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who subsequently issued a report in which he diagnosed the individual as suffering from Substance Abuse, Alcohol, based upon diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The Notification Letter further describes five separate incidents in which the individual was arrested and alcohol was a factor. The most recent arrests were in July 2004, when the individual was arrested for Driving While Intoxicated (DWI), and in February 2003, when the individual was arrested on a charge of Assault Against a Household Member. With regard to Criterion L, the Notification Letter states that following his July 2004 DWI, the individual informed DOE Security that he would stop drinking but later decided to resume drinking. In addition, the Notification Letter states that following his February 2003 assault arrest, the individual violated the terms of bond release by consuming alcohol at home.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on December 22, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On January 5, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on his own behalf, and also called his wife (separated), supervisor, girlfriend, a co-worker and two physicians.

The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh."

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was hired by a DOE contractor in September 1995, and submitted a request for a security clearance in February 1996. However, the background investigation of the individual revealed information of concern to DOE Security, which included two alcohol-related arrests. During the first incident, on March 6, 1994, the individual was arrested for Failing to Obey a Police Officer and Disorderly Conduct, following an altercation at his home during which his wife tried to kick him and fell backward after he grabbed her foot. The individual had consumed one or two beers prior to the incident and was not intoxicated, but was arrested for talking back to the police officer in a belligerent manner. The second incident occurred on Christmas Eve of the same year, December 24, 1994, when the individual was arrested and charged with Accessory to DWI after the car in which he was a passenger was stopped by police. The individual's friend was driving, another friend was a passenger, and all three were intoxicated and drinking at the time. The security concerns raised during the individual's background investigation were determined to be resolved by a Personnel Security Interview (PSI) conducted on June 27, 1996, and the individual was granted a security clearance.

The individual maintained his security clearance without incident until February 24, 2003, when he was arrested on a charge of Assault on a Household Member and Tampering or Damaging a Vehicle. At the time of this arrest, the individual had separated from his wife and was living with a girlfriend (Former Girlfriend) with whom the individual had a tumultuous relationship. On the evening of the arrest, the individual was waiting for his Former Girlfriend outside their home when she returned late in an intoxicated state, driving his car on a flat tire. The individual, who had been drinking prior to the incident, became enraged when the Former Girlfriend locked the doors and would not roll down a window. The individual broke out two car windows but did not physically assault the Former Girlfriend. The individual was arrested and released on \$1500 bond. Among the terms specified in the Order Setting Conditions of Release and Bond is that the individual not possess or consume any alcohol. However, the individual admittedly violated this provision by consuming beer at home during the pendency of the case.

Pursuant to a court order and on the recommendation of his attorney, the individual sought counseling with his Employee Assistance Program (EAP) in March 2003. The individual successfully completed ten sessions with the EAP counselor, working on anger management and communication skills. Also, on the advice of the EAP counselor, the individual attended a few Alcoholics Anonymous (AA) meetings to gain a better understanding of alcoholism on his Former Girlfriend's part. The EAP counselor determined that the individual was not drinking at a level that could be considered problematic. DOE Security conducted a PSI with the individual on May 5, 2003. On the basis of the information provided by the individual and the report of the EAP counselor, DOE Security determined that the concerns associated with the individual's February 2003 arrest were resolved and the individual was allowed to retain his security clearance.

On July 31, 2004, the individual was arrested on a charge of DWI. On this occasion, the individual reportedly consumed a beer and four shots of schnapps at a bar before attempting to drive home. The individual was stopped by the police after he was observed swerving back and forth across the road. The individual failed the field sobriety test and was given a breathalyzer that registered a blood alcohol level of .15. After his DWI arrest, the individual made the decision to stop drinking and began attending AA on a weekly basis. The individual also returned voluntarily to the EAP counselor. From August 23, 2004 through December 7, 2004, the individual attended eleven sessions with the EAP counselor. On October 13, 2004, the DWI charge was dismissed. On November 8, 2004, a PSI was conducted with the individual concerning the July 2004 DWI and his future intentions regarding the use of alcohol. The individual stated during this PSI that his intention was not to use alcohol because he had always told himself that if he ever got a DWI and it affected his job, he would stop. The individual further stated his intention to continue in AA and seeing the EAP counselor as long as he felt in necessary.

The individual abruptly stopped going to sessions with the EAP counselor, without explanation, on December 7, 2004. The individual also stopped attending AA. In January or February 2005, the individual resumed consuming alcohol after approximately six months of sobriety. On May 25, 2005, the individual was summoned for a PSI to assess the status of the his abstinence from alcohol and counseling. Upon being informed that the individual had ceased counseling and resumed drinking, DOE Security referred the individual to the DOE Psychiatrist.

The DOE Psychiatrist reviewed the individual's personnel security file and performed a psychiatric interview and evaluation of the individual on July 11, 2005. During the psychiatric interview, the individual revealed to the DOE Psychiatrist that he had another alcohol-related arrest prior to the four arrests already known to DOE Security. The individual stated that on that occasion in the late 1980's, he was arrested after consuming alcohol and getting into a fight with a man who observed the individual

making advances to the man's girlfriend. The individual further informed the DOE Psychiatrist that upon since resuming drinking earlier that year (2005), he drank an average of two to three beers, five days a week, and that he had been intoxicated three times during that period. However, laboratory tests conducted by the DOE Psychiatrist led him to believe that the individual was drinking more excessively than he reported. More specifically, the individual's GGT liver enzyme was elevated to 80 on a normal scale of 5 - 75, and his mean corpuscular volume (MCV) of red blood cells was elevated to 101 on a normal scale of 81-98. The individual's laboratory results showed no exposure to hepatitis, which might account for these elevations. Thus, the DOE Psychiatrist concluded that at the time of his evaluation, the individual was a user of alcohol habitually to excess.

In his report issued on July 30, 2005, the DOE Psychiatrist further diagnosed the individual with Substance Abuse, Alcohol (Alcohol Abuse) under the *DSM-IV TR* criteria. The DOE Psychiatrist also states that the individual's Alcohol Abuse is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 100 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, at least once a week over a year, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare for a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not.

## **II. Analysis**

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances

indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Criteria H & J, Alcohol Abuse

##### (1) Derogatory Information

The DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon diagnostic criteria set forth in the *DSM-IV TR*. DOE Exh. 18 at 11-12. The *DSM-IV TR* generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. *See id.* In the case of the individual, the DOE Psychiatrist determined that the individual met the third criterion (Criterion A3, recurrent legal problems) based upon the individual's assault arrest in February 2003 where alcohol was a factor, and his DWI arrest in July 2004. *Id.* at 12; Tr. at 112. At the hearing, the DOE Psychiatrist acknowledged that these two arrests did not occur within twelve months of one another, but opined that a diagnosis of Alcohol Abuse is appropriate in this case in view of the individual's two alcohol-related arrests in 1994. Tr. at 113. According to the DOE Psychiatrist, "there is clinical justification for making that diagnosis if there is a recurrent problem, even though there are not two in a 12-month period." Tr. at 114.

In addition, the DOE Psychiatrist concluded that at the time of his evaluation in July 2005, the individual was a user of alcohol habitually to excess. DOE Exh. 18 at

12. This conclusion was based upon the individual's admission that he had been intoxicated three times since he resumed drinking in February 2005, and laboratory tests obtained by the DOE Psychiatrist showing that the individual's GGT liver enzyme was elevated to 80 on a normal scale of 5 - 75 and his mean corpuscular volume (MCV) of red blood cells was elevated to 101 on a normal scale of 81-98. *Id.* at 11. The DOE Psychiatrist explained at the hearing: "[W]hen I saw him back last summer he had a history of five alcohol-related legal problems, including a DUI a year before where he was driving with a .15 blood alcohol content . . . His GGT was mildly elevated. His mean corpuscular volume was mildly elevated, but he had a normal hermacrit and hemoglobin . . . he had a negative hepatitis screen. He's not obese. He wasn't on any drugs that elevated his GGT. He didn't work with organic solvents. . . [T]hat combination of elevated GGT and MCV, given all the other information, is due to drinking habitually to excess, unless you can prove otherwise." Tr. at 70-71.<sup>2/</sup>

Having fully considered the record of this case, I find ample support for the DOE Psychiatrist's diagnosis of Alcohol Abuse. Accordingly, I find that DOE Security properly invoked Criteria H and J in suspending the individual's security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the concerns of DOE Security.

## (2) Mitigating Evidence

The individual testified that he stopped drinking in early November 2005<sup>3/</sup> and has consumed no alcohol since that time. Tr. at 88. Thus, the individual had five months

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<sup>2/</sup> As discussed in the succeeding section of this decision, the individual stopped drinking in November 2005, and his GGT and MCV levels returned to normal. According to the DOE Psychiatrist, this confirms his belief that the individual's elevated GGT and MCV levels in July 2005 were properly attributable to excessive drinking. Tr. at 71.

<sup>3/</sup> The individual's decision to stop drinking apparently coincided with his receipt of the Notification Letter in November 2005.

of sobriety at the time of the hearing. The individual's wife<sup>4/</sup> and girlfriend corroborated the individual's testimony, stating that they have not seen the individual consume any alcohol since the end of last year. Tr. at 15, 44-45. The individual's abstinence is also corroborated by laboratory tests performed in February 2006 showing that the individual's GGT liver enzymes and MCV have both now returned to a level well within the range of normal. See Ind. Exh. 3.<sup>5/</sup>

The individual also resumed attending weekly AA meetings in early November 2005. Tr. at 94-95; see Ind. Exh. 4. In early January 2006, the individual returned to his EAP counselor to seek guidance on alcohol treatment. According to the EAP counselor's report, dated March 21, 2006, the individual began bi-weekly sessions with the EAP counselor on January 13, 2006. Ind. Exh. 4 at 1. In addition, the EAP counselor referred the individual to an Intensive Outpatient (IOP) treatment program which the individual began in early February 2006. *Id.* The individual testified that he attends weekly three-hour group therapy sessions with his IOP, weekly AA meetings and bi-weekly sessions with his EAP counselor. Tr. at 94. The individual appeared sincere in committing to complete the six months of his IOP treatment program, continuing in AA, and maintaining bi-weekly sessions with his EAP counselor "until he tells me it's okay to go." Tr. at 105.

The DOE Psychiatrist testified at the conclusion of the hearing after listening to the testimony of the individual and the steps he has taken toward rehabilitation and reformation. While the DOE Psychiatrist acknowledged that the individual had made a good beginning, he opined that the individual has not yet achieved adequate rehabilitation or reformation from his Alcohol Abuse. Tr. at 124-25. The DOE Psychiatrist adhered to the requirements outlined in his report: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 100 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, at least once a week over

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<sup>4/</sup> The individual is separated from his wife but they maintain a close relationship. They speak on the phone often and see each other on a regular basis when the individual visits their two daughters. Tr. at 14.

<sup>5/</sup> At the hearing, the individual called two physicians to support his position that his excessive GGT and MCV readings in July 2005 were not necessarily due to excessive drinking. However, after conferring with the DOE Psychiatrist during the course of the hearing, both physicians agreed that alcohol was likely the principal cause for the high readings in July 2005 in view of his GGT and MCV readings returning to normal range following his cessation of drinking in November 2005. See Tr. at 62-63, 82-83. The results of the laboratory test administered by one of the physicians in February 2006 showed that the individual's GGT enzyme level as 48 on a normal range of 8 - 78, and his MCV as 96.3 on a normal range of 83.0 - 102.0. See Ind. Exh 3.



a year's time, or 2) total abstinence for three years with satisfactory completion of a professionally led alcohol treatment program, with aftercare for a minimum of six months, or 3) as adequate evidence of reformation, two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not. Tr. at 126; see DOE Exh.18 at 13.

Under the circumstances of this case, I find it appropriate to defer to the opinion of the DOE Psychiatrist. While I commend the individual for his five months of abstinence at the time of the hearing and seeking counseling in early 2006, I find that these initial steps fall far short of adequate evidence of rehabilitation or reformation at this time. Moreover, it is apparent that the individual made the decision to stop drinking in November 2005 in an attempt to keep his security clearance and still does not fully accept that he has a drinking problem. The individual testified that "I never thought I drank too much" and that he disagrees with the diagnosis of the DOE Psychiatrist. Tr. at 108; see Tr. at 110. Under these circumstances, I am compelled to find that the individual has not yet overcome the security concerns associated with his past use of alcohol and diagnosis of Alcohol Abuse. See *Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

#### B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual's conduct in two instances as a basis for DOE Security's concern that he is not honest, reliable or trustworthy. First, following his February 2003 assault arrest, the individual admittedly violated the terms of bond release by consuming alcohol at home during the pendency of the case. See Tr. at 92-93. Second, the individual stated during November 2004 PSI that he had decided to stop drinking as a result of the July 2004 DWI, but then resumed drinking in February 2005. Tr. at 89-90.<sup>6/</sup>

The individual's wife, supervisor and girlfriend described the individual as honest, reliable and trustworthy. See Tr. at 13, 36, 43-44. However, the matters raised by Notification Letter under Criterion L are symptomatic of the individual's Alcohol Abuse. As set forth in the preceding section of this decision, I have determined that

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<sup>6/</sup> At the hearing, the individual testified that he did not recall the court order specifying that he not drink: "I don't remember that paper ordering me not to. So if I did read it and I did know about it and I did drink when they told me about it, I guess, yeah, I acted irresponsibly." Tr. at 103. In his response to the Notification Letter, however, the individual states: "After evaluating myself, I concluded that being home and having a beer or a glass of wine with dinner would be ok, as long as I stayed home." DOE Exh. 20 at 3.

the individual has failed to mitigate the concerns of DOE Security associated with that diagnosis. I therefore find, correspondingly, that the individual has not yet overcome the concerns of DOE Security under Criterion L.

### **III. Conclusion**

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with his past use of alcohol and diagnosis of Alcohol Abuse. I am therefore unable to find that restoring the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: July 19, 2006